

T.K. Devaraju Vs. State of Karnataka

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Court : Karnataka

Decided On : Jun-13-1979

Reported in : ILR1979KAR2084; (1979)ILLJ473Kant

Judge : M. Rama Jois, J.

Acts : [Constitution of India](#) - Articles 14, 16(1) and 226; Karnataka State Civil Services (General Recruitment) Rules, 1977 - Rule 4 and 4(2); Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 - Regulation 5(5)

Appeal No. : W.P. No. 11966 of 1978

Appellant : T.K. Devaraju

Respondent : State of Karnataka

Advocate for Pet/Ap. : Sri. S. K. Kulkarni

Judgement :

ORDER

1. Whether in making appointment to a selection post the appointing authority can select and appoint any one among the eligible officers without recording any reason as to why one amongst the several eligible officers is selected, is the precise question of law that arises for consideration in this writ petition filed under Art. 226 of the [Constitution of India](#), in which the legality of the appointment made

to the post of Director of Mines and Geology by the State Government, is challenged by the petitioner, who is a Deputy Director in the same Department.

2. FACTS : (i) The petitioner was a direct recruit to the post of Geologist. He was appointed in 26-10-1964. Respondent 3 was an Assistant Geologist. He was promoted as Geologist on 26-5-1960. Both were placed in independent charge of the post of Senior Geologist for some time and were promoted as Senior Geologists on 16-7-1976. Thereafter, the petitioner respondent 3 and another were promoted as Deputy Director on 29-7-1977. The seniority of these three officers and others is not finalised though in W.P. 3831 of 1977 decided on 16-6-1978 a direction to fix seniority in accordance with law has been issued after quashing the seniority list published on 19-4-77. By notification dated 18th October, 1978 (Exhibit G) respondent 3 was promoted and appointed as Director. The petitioner has presented this writ petition praying for setting aside the said appointment on the ground that it is contrary to law and has also prayed for the issue of a writ of mandamus directing the State Government to consider his case for promotion to the post of Director.

(ii) In the statement of objections filed by the State Government, it is not disputed that all the three Deputy Directors, viz., the petitioner, respondent 3 and another, were fully qualified and eligible for consideration of their cases for promotion. However, it is asserted that the Chief Minister who is holding the portfolio of the Department of Mines and Geology considered respondent 3 as more suitable after considering the cases of the three Deputy Directors. The relevant portion of the statement of objection reads :

'... As required by the Government Order No. DPAR 76 SRS 76 dt. 10-12-1976, the Hon'ble Chief Minister who is also the Minister holding the portfolio of Mines and Geology considered the merits and suitability of all these 3 Deputy Directors with due regard to the seniority. The Hon'ble Chief Minister after examining the service records pertaining to the petitioner, 3rd respondent and Sri Ramachandra Raj Urs and after evaluating the merit and suitability and having regard to the seniority as reflected in the seniority list dt. 19-4-1977 found 3rd respondent more suitable both on the grounds of merits as well as on seniority.

In support of the assertion made in the statement of objection, the State Government has produced the original records. The relevant portion of the proceeding which ended with the appointment of respondent 3, reads as follows :

Sub : Filling up the post of Director of Mines and Geology, B'lore. No. DPAR 247 SHD 78 7. The post of Director of Mines and Geology falls vacant w.e.f. 1-10-78 with the retirement of Sri G. Shivashankar. According to the C and R Rules, the post of Director of Mines and Geology has to be filled up by promotion by selection from the cadre of Deputy Director and if no suitable person is available for promotion, by Direct recruitment.

8. The following are the Deputy Directors of mines and Geology in the order of seniority, who are to be considered for selection and appointment to the post of Director of Mines and Geology :

Sl. No.	Name	Date of Birth	Date of appointment	Deputy Director
1.	C. N. Venkatakumaran	19-8-1929	26-8-1977	2.
2.	B. Ramachandraraj Urs	23-3-1934	1-8-1973	3.
3.	T. K. Devaraju	2-2-1933	1-8-1977	4.

9. All the above-mentioned 3 officers have passed the prescribed Departmental Examinations and the Kannada Language examination. The C.Rs. of the officers are placed below.

10. According to G.O. No. DPAR 76 SRS 76 dated 10-12-1976, the merit and suitability of candidates for appointment as heads of departments will have to be assessed by the Chief Minister in consultation with the Minister concerned.

11. The file is submitted for selection of an officer for appointment as Director of Mines and Geology, Bangalore w.e.f. 1-10-1978 vice Sri G. Shivashankar, retiring from service.

12. In this case since Mines and Geology comes under the portfolio of the C.M. the selection for the post of Director of Mines and Geology will have to be made by him (C.M.)

13. Since, the Chief Minister also happens to be incharge of the portfolio of the Mines and Geology, it is only the Chief Minister who has to decide as to which Deputy Director of Mines and Geology should be appointed as Directors of Mines and Geology. The C.Rs. of the 3 Deputy Directors of Mines and Geology, who have passed the prescribed departmental examinations and who are otherwise eligible for being considered for appointments as Director of Mines and Geology are placed below. The present Director of Mines and Geology is retiring at the end of this month and hence, the C.M. may kindly take a decision, on his successor, before that time.

Sd./- XX

Deputy Director to Government,

DCA & DPAR (Services of Cabinet).

14. Since the process of selection takes some time the C.M. may order the re-employment of Sri Shivashankar till the end of October 1978, pending approval of the cabinet.

15. In the meantime, the papers will be submitted to the C.M. for the selection of the successor.

Sd./- XX

26-9-1978

Sd./- D. Devaraj Urs.

Chief Minister.

18. Order of re-employment of Sri G. Shivashankar for one month from 1-10-78 to 31-10-78 have been issued. File is resubmitted for selection of the successor by the Chief Minister-Reference para 15 facts of the case are given at paras 7 to 10xxx. Ex post facto approval of the cabinet may be obtained after issue of orders on selection of successor.

* * * 21. Shri Venkatakumaran any be appointed,

Sd./- Devaraj Urs,

Chief Minister

13-10-78,'

3. Sri S. K. Kulkarni, learned counsel for the petitioner, contended that the records do not disclose that the case of the petitioner was considered. He also argued that reasons should have been given for selecting respondent 3 in preference to the petitioner and another. In the absence of any reason given, he submitted that the selection has to be annulled on the ground that it is arbitrary. In support of his submission he relied on the observations of the Supreme Court in the case of Union of India v. M. L. Capoor, : (1973)11LLJ504SC .

The relevant portion reads as follows :

'28. In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Arts. 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particular as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded by shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee.

This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with. We think that reliance was rightly placed by the respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were : Associated Electrical Industries (India) Pvt. Ltd., Calcutta v. Its Workmen, : (1961)11LLJ122SC and Collector of Monghyr v. Keshav Prasad Goenka, : [1963]1SCR98 .'

Relying on the above observations, he submitted that as no reasons are given for the selection of respondent 3, the right for equal opportunity guaranteed to the petitioner under Arts. 14 and 16(1) of the Constitution is violated and the selection is also violative of R. 4 of the Karnataka State Civil Services (General Recruitment) Rules, 1977 (hereinafter referred to as 'the Rules'). He also submitted that the petitioner being a direct recruit to the cadre of Geologist is senior to respondent 3 and that without fixing seniority pursuant to the writ issued by this Court in W.P. 3831 of 1977, respondent 3 was treated as senior and there was no justification to supersede his claim.

4. Sri B. B. Mandappa, learned High Court Government Pleader on the contrary, argued that the fact that the names of the petitioner, respondent 3 and another were put up for consideration shows that the cases of all the three officers were considered and by the mere fact that no reasons are given, it cannot be concluded that there was no consideration of comparative merits of the three eligible officers before selecting respondent 3. He referred to the statement of objection in which it is specifically asserted that merit and suitability of all the three Deputy Directors were considered by the Chief Minister and after evaluating the merit and suitability found respondent 3 was more suitable.

5. Having set out all the relevant facts as stated in the pleadings and also the rival contentions, I shall now proceed to consider the validity of the contentions urged for the parties. The post of Director is a selection post. The procedure for making appointment to a selection post is laid down in Rule 4(2) of the Rules which reads :

'4. Procedure for appointment. -

Subject to the provisions of these rules, appointments to any service or post shall be made -

(1) ** ** ** (2) In the case of recruitment by promotion -

(a) if it is to a post to be filled by promotion by selection, by selection of a person, on the basis of merit and suitability in all respects to discharge the duties of the post with due regard to seniority, from among persons eligible for promotion :

(b) if it is a post other than that referred to in sub-clause (a), by selection of a person on the basis of seniority-cum-merit, that is, seniority subject to fitness of the candidate to discharge the duties of the post, from among persons eligible for promotion.'

The above rule which prescribes the procedure for appointment also serves the purpose of ensuring compliance to Art. 16(1) of the Constitution which guarantees equality of opportunity in matters relating to employment under the State and the right to equality, guaranteed under Art. 14 of the Constitution. The extent of right to which a civil servant is entitled to in the matter of promotion to a selection post is well settled. The right is for a fair and proper consideration. If appointment of an officer to a selection post is made without considering the comparative merit of officers, who under the rules of recruitment are eligible for consideration, an eligible officer whose case has not been considered can legitimately complain, before the Court that his right for consideration is violated. If, on the other hand, on proper consideration of the cases of all the eligible candidates, one of them is found suitable for promotion and other's unsuitable, or any of them is found more suitable in cases where more than one are found suitable for appointment to a selection post, such selection made cannot be a subject-matter for judicial review. In such cases the candidates not selected, whether seniors or juniors, cannot complain of violation of R. 4 of the Rules or violation of Arts. 14 and 16(1) of the Constitution. However, if more than one candidate, are adjudged equal in merit, then the claim of senior amongst them, for appointment, cannot be denied. (See : B. Virupakshappa v. State of Mysore, I.L.R. Kar 1979 (1) 92.

6. Therefore, the two questions which arise for consideration in this case are :

(i) Whether the case of the three Deputy Directors were considered by comparing their merit and suitability and upon such consideration, respondent 3 alone was found suitable or he was found more suitable and the petitioner and another were found unsuitable or less suitable or

(ii) All the three Deputy Directors were found equal in merit and suitability and respondent 3 was selected on the ground that he was senior to the two others

The records do not disclose that consideration of the comparative merit and suitability of the three officers as to their fitness to discharge the duties of the post of Director which is the requirement of Rule 4(2)(b) of the Rules preceded the decision to appoint respondent 3. All that the record shows is that the names of three persons were put up and the Chief Minister recorded that respondent 3 be appointed. No opinion is recorded to the effect that on comparing the merit and suitability of the three officers, respondent 3 was found more merited and suitable for appointment or that respondent 3 alone was found suitable and the petitioner and another were found unsuitable for appointment or that respondent 3 was preferred on the ground of seniority, merit and suitability of the three being equal. In fact, as stated earlier, seniority inter se is still to be fixed and finalised. In this situation no importance could be attached to the averment made in para 3 of the statement of objection extracted earlier, in which it is stated that the Chief Minister selected respondent 3 after considering the comparative merit and suitability of all the three officers, as the knowledge of the deponent who is an Under Secretary to Government is only derived from the records as stated by him and the records do not disclose any such information. The deponent speaks to facts which are not borne out by the records. I find it extremely difficult to agree with the learned High Court Government Pleader that as the names of the three officers were put up the file and one of them was appointed it shows that the case of the petitioner had been considered. It cannot be presumed that the consideration of comparative merit, which is invisible in the record is nevertheless in exercise. It is unsafe to proceed on any such assumption having regard to the valuable rights of officers for consideration of their cases for selection and appointment as any such assumption would render the right illusory.

7. Another infirmity disclosed from the records, is that no uniform criteria is adopted in the matter of taking in account the confidential records of the eligible officers. In the note prepared on 16-9-1978 by the Deputy Secretary of the Commerce and Industries Department, it is stated that the confidential records for the last three years of the three officers were placed in the file for consideration by the Department of Personnel and Administrative Reforms in making the selection. But the original records produced disclose that confidential records of respondent 3 from the year 1960 upto 31-3-1978 were put up whereas the confidential records of the petitioner and another for the period commencing from 1-1-1976 to 31-3-1977 and for the year ending 31-12-1975 alone were put up. The latest confidential reports for the year ending 31-3-78, pertaining to the petitioner and another are not found in the file. It should be pointed out that even in the matter of taking confidential records for consideration, adoption of uniform rule is necessary to ensure fair and proper consideration. If three year's confidential records of the eligible officers preceding the date of consideration is treated as relevant it must be so in respect of all the officers. Because Exclusion of good or bad record even for any one year out of three years' record which is considered relevant for taking into account, confidential records earlier to three years in the case of one and not taking into account the confidential records for similar period in the case of another, is sure to place one or the other officer under an advantage or disadvantage as the case may be and open to the criticism that there has been no fair and proper consideration by applying uniform criteria and consequently the right to equality is denied. In the present case though such a criteria was indicated in the earlier note put up by the Industries and Commerce Department, the same was not complied with as the confidential reports of the petitioner and another for the period ending 31-3-1978 were not placed in the file for consideration and there is no explanation as to why it was not placed in the records for consideration, though the confidential record of respondent 3 for the year ending 31-3-1978 was placed in the records.

8. Further the seniority was not finalised before considering the case. It is also not clear whether respondent 3 was selected on the ground that the three officers were found suitable for appointment and respondent 3 was senior, as he was shown as senior in the note put up or that he was selected on the ground of his

merit and suitability. As stated earlier, all the three eligible officers were promoted as Deputy Directors by selection on 29-7-1977. It is no doubt true that confidential reports of respondent 3 are good. But the two confidential reports of the petitioner and another placed in the file also disclose that their record of service is also good and they have no adverse remarks.

9. In the circumstances and in the absence of any material in the records to indicate that the comparative merit of all the three Deputy Directors was considered while making the selection of respondent 3 indicating the basis of selection, the contention of the petitioner that his case was not considered has to be upheld.

10. The next point for consideration is, as to whether the recording of reasons for selecting one amongst several eligible officers is or is not necessary. The very existence of the right in the civil servants for a fair and proper consideration of their cases for promotion to higher posts, to which they are eligible to be considered for promotion, makes it impossible to hold that recording of reasons is not necessary. It is no doubt true that it is the power of the appointing authority to make the selection but that power has to be exercised in a reasonable manner, because, arbitrary exercise of power is antithesis of Rule of Law, which is one of the basic features of our constitutional system. Compliance to Rule of Law is necessary not only to safeguard the rights of individuals but also to safeguard public interest. In the present case, the public interest involved is the appointment of the most suitable officer to hold the important and responsible post of the Head of the Department under the State Government. In order to ensure that the selection is fair and proper and is in accordance with law, formation of opinion, after applying their mind to the comparative merits and suitability of all the officers eligible for consideration, is essential. The fair and proper consideration could be shown to exist only by recording reasons in making the selection and appointment, because that could only be the visible safeguard for the right for consideration available to a civil servant in the matter of appointment by promotion by selection as observed by the Supreme Court in Kapoor's case (*supra*). If the contention urged for the State Government that recording of reasons is not necessary were to be accepted, then even that only visible safeguard available to the civil servants would cease to

exist and would also be detrimental to public interest. Therefore, recording of reasons however brief it may be for selecting one in preference to the other eligible candidates which can be correlated to their confidential reports and the record of their performance in the lower post or posts, is of utmost importance of avoid arbitrariness in making appointments to selection posts and to ensure all the eligible candidates that the State has considered their cases fairly in obedience to the mandate addressed to it to accord equality before law and equal opportunity in matters relating to employment, under the State by Arts. 14 and 16(1) of the Constitution. This is the principle laid down by the Supreme Court in Capoor's case (supra). Though the said decision was rendered while interpreting Regulation 5(5) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955, which required the recording of reason for supersession, the right was traced to Arts. 14 and 16(1) of the Constitution. (See decision of this Court in W.P. No. 7432 of 1978-D.D. 10-11-1978 N. Shankara Rao v. K. E. B.). Therefore, selection of one to the exclusion of other eligible candidates under Rule 4(2)(b) of the Rules which is also incorporated to ensure the right of equal opportunity must also disclose a proper consideration and reason for selecting one in preference to the other eligible candidates. Upholding of the decision to appoint respondent 3, which was made without consideration of the comparative merits of the three eligible officers would render the recognised right for consideration meaningless.

11. In the light of discussion above, having due regard to the fundamental right for equality before law guaranteed under Art. 14 and the right for equal opportunity in matters relating to employment under the State under Art. 16(1) of the Constitution read with Rule 4(2)(b) of the Rules, my conclusions are as follows :

(1) In making appointments to a post by promotion by selection, the merit and suitability of all the candidates eligible for consideration must be compared by the appointing authority or the selecting authority as the case may be, and upon such consideration the official adjudged as suitable or the senior most officer, if more than one officer are found suitable and adjudged as equal in merit, should be selected and appointed by the appointing authority.

(2) The only method of ensuring that the requirement to consider the comparative merits of the eligible officers has been complied with, is by recording reasons however brief it may be, indicating that selection has been made on comparing the merit and suitability of the eligible officers as disclosed from their confidential reports and service records.

(3) The period of confidential records taken into consideration to adjudge the suitability of the eligible officers should be specific and uniform for all the officers, whose cases are considered.

(4) As seniority assumes importance when more than one officer are found suitable and equal in merit, seniority of all eligible officers should be determined and indicated at the time of consideration of their cases for selection.

(5) If a decision is taken by the competent authority as to the suitability of an officer for appointment to a higher post having considered the confidential report and service records of all the eligible officers and recording the reasons, such a selection cannot be interfered with by the Court and the Court cannot substitute its judgment in the matter of selection, to that of the competent authority. But, if it is established that before making the appointment there has been no consideration of cases of eligible officers in the required manner and no reason is given for selecting one among the several eligible officers, the selection and appointment, when called in question before the Court by an aggrieved person, is liable to set aside and the competent authority would have to be directed to make selection and appointment after considering the cases of officers eligible for consideration in accordance with law.

(6) In the present case, there has been no consideration of the cases of the eligible candidates which includes the petitioner in accordance with law and, therefore, the appointment of respondent 3 to the post of Director of Mines and Geology has to be held invalid and the Government should be directed to reconsider the case of all eligible officers and to make fresh appointment of the officer selected after consideration in accordance with law and in the light of this judgment.

12. However, I am of the opinion that immediate displacement of respondent 3 is not necessary as it takes sometime to make fresh appointment after considering the comparative merits of the eligible officers and as such immediate displacement is likely to cause inconvenience in the administration of the department and, therefore, it would be sufficient to direct the Government to make appropriate orders in accordance with the result of the fresh selection.

13. For the reasons aforesaid, I make the following order :

(i) Rule made absolute.

(ii) A writ of mandamus shall issue to the State Government to consider the case of the petitioner, respondent 3 and any other eligible officers for appointment to the post of Director of Mines and Geology in accordance with law and in the light of this judgment and to make fresh appointment within a period of three months from today.

(iii) It is further directed that if on such reconsideration, any officer other than respondent 3 is selected and appointed, the appointment of respondent 3 shall cease to be effective from the date of such appointment.

(iv) No costs.